IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1475 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GRAM SHILP

Versus

A M C

Appearance:

1. Special Civil Application No. 1475 of 1992

MR DD VYAS for Petitioner No. 1

MR MG NAGARKAR for Respondents No. 1-2

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 06/12/2001

ORAL JUDGEMENT

The present petition is filed by Gram Shilp against the Ahmedabad Municipal Corporation & another seeking the relief to the effect that the respondents be directed to refund the entire amount of Earnest Money

Deposit to the petitioner as mentioned in Annexure G to the petition by declaring that the petitioner is legally entitled to claim the same.

2. The petitioner has also prayed for quashing and setting aside the impugned communications dated 25.6.91, 9.9.91 which are at Annexure C & E to the petition respectively by declaring them as arbitrary, unjust and bad in law and a further direction to the respondents to refund the entire amount of Earnest Money deposited as mentioned in Annexure G to the petition.

3. The facts giving rise to the present petition are that the petitioner is a unit run by Khadi Gramodyog Sangh, Rajkot. It is the case of the petitioner that on 28.2.91, the respondent Corporation had invited tenders with respect to certain items of `Polyvastra'. Pursuant to the said `short notice tender', the petitioner filled in the tenders and an amount of Rs.1,93,400/- was paid to the respondent Authority by way of Earnest Money. The tenders were filled in between 15.4.1991 and 20.4.1991. It is the case of the petitioner that pursuant to the said tender no action was taken for considerable long time. It is further case of the petitioner that as for a long period no action was taken by the respondent Corporation, the petitioner asked the respondent Corporation to inform whether the tender had been accepted or not.

4. Mr.Nagarkar, Ld. Advocate for the respondent Corporation invited the attention of the Court to the correspondence between the respondents Corporation and petitioner, starting from the letter dated 19.6.91 Annexure B to G contending that the petitioner had informed the respondent authorities by a letter dated 19.6.91, which is produced at Annexure B that if the order is placed before 1.7.91 he has no objection about the validity period of being 60 days but if the order is placed after 1.7.91, he will not be able to supply the goods at the old rates.

5. An affidavit in reply is filed by the authorities and alongwith the reply certain letters are produced at Annexure A to E. Perusal of those letters reveal that the petitioner had agreed for the validity period of 60 days starting from 1.7.91. In view of that, the grievance made by the petitioners is misplaced and the case of the petitioner cannot be accepted. The respondent Authorities have stated in Para 4 of the affidavit in reply that "After considering these 2 letters i.e. Annexure A & B and further previous

correspondence, the respondent Authority has accepted the tenders submitted by the petitioner on 11.7.91 and was sent by the petitioner by UPC on 19.7.91". The Authorities have also stated in Para 5 that:-

"The petitioner has no reason whatsoever to escape from the liability as per the terms of the tender and the contents of the letter dated 16.7.1991 of the petitioner are not correct and he is not entitled to claim refund of the Earnest Money as mentioned in it. I say that the petitioner has violated condition no.14 of the tender, zerox copy of which is annexed hereto as Annexure E. I say that as per the conditions 12 and 14, the respondent Authority has forfeited the amount of deposits for the petitioner and has acted according to those conditions and the petitioner has evaded to fulfill the conditions of the tenders submitted by him...."

In view of these averments, the petition has no substance.

5. Alternatively, the petition involves a disputed question of fact as to whether the petitioner had agreed to the validity period of being 60 days or not. Whether it starts from 1.7.91 and if that is so, the Authorities having accepted the tender by a letter dated 11.7.91 about which the Authorities had also issued other letters dated 19.8.91, 16.8.91, 23.8.91 by Regd. A.D. whether the petitioner has committed breach of the terms of conditions of the tender or not. In view of the aforesaid discussion, the petition deserves to be rejected. No relief can be granted. Rule is discharged with no order as to costs.

(Ravi R Tripathi, J)
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